IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

CRL.A.No. 2042 of 2006(A)

SC.307/2005 of ADDL. SESSIONS COURT(ADHOC)-II,
THODUPUZHA.
CP.27/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IDUKKI

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APPELLANT/ACCUSED:

ANISH,
S/O.DEVASIA,
C.NO.5437, CENTRAL PRISON,
VIYYUR.

BY ADV. ADV.R.O.MUHAMMED SHAMEER(STATE BRIEF)

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY S.I. OF POLICE KANJIKUZHY.

BY PUBLIC PROSECUTOR SRI. C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 16/01/2007, THEJ COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 2042 OF 2006

Dated this the 16th day of January, 2007

JUDGMENT

The appellant is the accused in Sessions Case No.307 of 2005 on the file of the Additional Sessions Court (Adhoc) II, Thodupuzha. He faced trial for the offences punishable under Sections 447 and 436 I.P.C.

2. The prosecution case against the appellant was that on 22.10.2004 at 2 a.m., he set fire to the house of PW.1 bearing No.VIII/219 of Kanjikuzhy Panchayat and thereby caused a loss of Rs.20,000/- to PW.1 and her family. To prove the case against the appellant, the prosecution examined PWs.1 to 11 and produced Exts.P1 to P7 as well as MOs.1 to 3. Exts.D1 to D5 were produced on the side of the defence. On closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. The appellant denied the allegations levelled against him and stated that the case was foisted against him as he was not in good terms with PW.1. The trial court, relying on the evidence adduced by the prosecution, found the appellant guilty under Section 436 I.P.C., convicted him thereunder and sentenced him to undergo rigorous imprisonment for a

period of three years and to pay a fine of Rs.5000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of three months. Set off was also allowed under Section 428 Cr.P.C.

3. This appeal is filed through the jail authorities and the appellant is defended by a State Brief. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant raised three points before this Court: (i) the trial court misread the prosecution evidence to find the appellant guilty of the offence, (ii) the prosecution had not presented the true version of the case and (iii) the evidence of PWs.1 and 4 cannot be relied on to find the appellant guilty of the offence as alleged by the prosecution.

5. The prosecution case is revealed from the evidence of PW.1 who was aged 13 at the time of giving Ext.P1 First Information Statement before the police. This witness stated that she was residing in a thatched house with her 92 year old father and 50 year old mentally depressed mother. She further stated that the appellant was her brother born to her father in his first marriage with PW.2 and that though a portion of the

property of her father was assigned to PW.2, the appellant used to come to her house demanding more share of the property. She further stated that on the day of the incident, the appellant came to her house, threatened her parents and manhandled them demanding share of the property and out of fear she, her father and mother sought shelter in the house of their neighbour, one Christudas. This witness further deposed that at about 2 a.m. she woke up on hearing some sound and found that her house was on fire and that the appellant was standing near the burning house. PW.1 deposed that her house was completely destroyed and on 22.12.2004 she filed Ext.P2 complaint and since the police did not consider the complaint, she filed Ext.P1 First Information Statement on 24.12. 2004 on the basis of which a case was registered against the appellant. This witness also stated that the reason for setting fire to her house was due to property dispute between the appellant and her father. The evidence of this witness was accepted by the trial court. Though there were minor contradictions in Ext.P1 statement given to the police and the evidence given by her before the trial court, this Court is of the view that the minor contradictions cannot be taken as a reason for discarding her evidence. The trial court was right in placing reliance on the evidence of PW.1.

6. The trial court also placed reliance on PW.4, neighbour of PW.1.

He deposed that on the previous day of the incident, he heard the appellant shouting and when he went to the house of PW.1 he saw the appellant manhandling PW.1 and her father. He also stated that he and his friends tried to stop the appellant from manhandling the father of PW.1. PW.4 further stated that at about 12.30 p.m. that day, the appellant came near his house and picked up a quarrel. Even though PW.4 had not witnessed the incident, the evidence given by him would clearly show that the appellant was responsible for setting fire to the house of PW.1. The prosecution also examined PW.2, the mother of the appellant, but she turned hostile to the prosecution. The other witnesses examined were the police officials and the persons who proved Exts.P4, P5 and P6.

7. Even though there were some drawbacks in the investigation conducted by the police officials, the prosecution succeeded in proving the circumstances under which the appellant set fire to the house. In the above circumstances, the findings entered by the trial court require no interference by this Court.

8. Learned counsel appearing for the appellant now submits that the sentence awarded against the appellant is excessive. The trial court found that the offence committed by the appellant was a grievous one which can

be punished with imprisonment for life. The trial court only awarded rigorous imprisonment for a period of three years. Considering the age of the appellant and his relationship with PW.1, this Court is inclined to reduce the sentence of imprisonment to a period of two years. Accordingly the appellant is sentenced to undergo rigorous imprisonment for a period of two years. No interference is called for with regard to the sentence of fine.

With the above modification in the substantive sentence, the Crl. Appeal is dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A.NO.2042/2006

JUDGMENT

16TH JANUARY,2006